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6 **BEFORE THE VICTIM COMPENSATION AND GOVERNMENT CLAIMS BOARD**
7 **OF THE STATE OF CALIFORNIA**

8
9 In the Matter of the Application of:

Precedent Decision No. 01 - 02

10 **A.E.R.**
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12 A hearing on this application was held on June 7, 2001, in Los Angeles, California by
13 Judith A. Kopec, Hearing Officer; assigned to hear this matter by the Executive Officer of the Victim
14 Compensation and Government Claims Board (Board).

15 The applicant, A.E.R., attended the hearing.

16 **Claim History**

17 The application was received on March 27, 2000; was recommended for denial on the
18 December 5, 2000, consent calendar; and was appealed.

19 **Summary of Issues**

20 Staff recommended the denial of the application because staff determined that there was
21 insufficient evidence that A.E.R. was the victim of a qualifying crime.

22 **Findings of Fact**

23 At ten in the morning on April 21, 1999, A.E.R. was driving eastbound on the Angeles Crest
24 Highway through the Angeles National Forest delivering mail to residences in the National Forest.
25 He had driven this road twice a day, six days a week for six years. The Angeles Crest Highway is a
26 two-lane roadway that winds through hilly terrain.
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1 According to the police report, the maximum speed on the road was 55 miles per hour. Two
2 warning signs were posted for westbound traffic: one advised of a “winding roadway” ahead, the
3 other advised a speed of 25 miles per hour for the approaching curve.

4 S.A., an 18-year-old high school senior, was driving westbound on the Angeles Crest Highway
5 with three friends, also high school seniors: I.E., 18 years old, was in the front passenger seat; M.L.,
6 17 years old, was in the left rear seat; N.C., 17 years old, was in the center rear seat; and L.A., 18
7 years old, was in the right rear seat. They left school that morning to take a ride during a free period.

8 A.E.R. testified that he was driving uphill at 30 to 35 miles per hour into what he described as a
9 “blind curve.” According to the police report, the road was curving to A.E.R.’s left. S.A. was driving
10 downhill, and the road was curving to S.A.’s right. As A.E.R. entered the curve, he saw S.A.’s car
11 cross the double yellow line and hit him. A.E.R. was pinned in the car, unable to move. He saw that
12 his engine was smoking and he was afraid that the car was going to catch fire.

13 A.E.R. was extracted from the car and taken to a hospital, suffering fractures of his neck, back
14 and left femur, laceration of his liver, and injury to his right eye. A.E.R. spent four months in the
15 hospital. His left leg remains numb and he walks with a cane. He has been unable to work since the
16 collision.

17 In a statement in the police report, S.A. stated that he believed the speed limit was 30 to 35 miles
18 per hour, but admitted driving about 60 miles per hour. Since he was going downhill at the time of the
19 collision, he acknowledged that he was probably going faster than 60 miles per hour when he hit
20 A.E.R.. He claimed that he knew how to control the car, but he warned his passengers to fasten their
21 seat belts “just in case.” S.A. admitted hearing his tires screech while driving around curves prior to
22 the collision. He stated that he had driven this road four or five times prior to the collision, the most
23 recent being about two months earlier.

24 According to statements in the police report, several of S.A.’s friends repeatedly told him to slow
25 down. I.E. stated that they had passed three cars before the collision, one of which was done by
26 illegally crossing the double yellow lines. M.L. reported telling S.A. to slow down, saying, “I don’t
27 want to die here.” L.A. stated that S.A. repeatedly sped up and then slowed down as though he were
28 trying to scare them. He also reported that the car crossed the double yellow lines twice while going
29 around curves.

1 According to the police report, S.A. suffered fractures to the left clavicle, a rib and both arms;
2 N.C. fractured her back in two locations and had minimal motor activity of her legs; L.A. suffered
3 internal injuries and contusions; and M.L. suffered torn ligaments and contusions on his back.

4 The investigation by the California Highway Patrol determined that S.A. was driving between
5 57.6 and 64.2 miles per hour when his car began to leave skid marks on the road before the collision.
6 The investigation report concluded that S.A. deliberately drove at twice what he believed the speed
7 limit to be prior to the collision. The report also concluded that S.A. knew of his unsafe driving
8 maneuvers and blatantly disregarded the safety of others. The report found that
9 S.A. violated Vehicle Code sections 21460(a) [Double yellow lines]; 23103(a) [Reckless driving];
10 23104(a) [Reckless driving causing bodily injury]; and 22349 and 22350 [Speed limit].

11 According to court documents submitted by A.E.R., S.A. was charged with five counts of violating
12 Vehicle Code section 23104(a) [Reckless driving causing bodily injury]. Prior to trial, S.A. pled nolo
13 contendere to and was found guilty of one count of violating Vehicle Code section 23104(a). The
14 remaining counts were dismissed in furtherance of justice. S.A. was sentenced to 30 days in county jail
15 and placed under three years of summary probation.

16 **Determination of Issues**

17 An application shall be granted if a preponderance of the evidence shows that as a direct result of
18 a crime, the victim incurred an injury resulting in a pecuniary loss. (Gov. Code, § 13964(a).) The
19 applicant has the burden of proving, by a preponderance of the evidence, all issues necessary to establish
20 eligibility, including the elements of the qualifying crime. (Cal. Code Regs., tit. 2, §§ 647.32, 653.4.)¹
21 Significant weight may be given to the evidence from and conclusions of a law enforcement agency
22 after investigation when determining whether or not a qualifying crime occurred. (Reg. § 653.5(b).)

23 Unless specifically authorized, no act involving the operation of a vehicle constitutes a
24 qualifying crime. (Gov. Code, § 13960(c).) The following specific crimes are qualifying crimes if
25 injury or death results: hit and run [Veh. Code, § 20001]; murder when a vehicle is the instrumentality
26 of the murder. [Pen Code, § 187]; gross vehicular manslaughter while intoxicated [Pen. Code,

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¹ All citations to regulations are to Title 2, California Code of Regulations.

§ 191.5]; vehicular manslaughter [Pen. Code, § 192(c)]; and driving under the influence of alcohol or drugs

[Veh. Code, § 23153]. (Gov. Code, § 13960(c); Reg. § 654.1(b).) The following are also qualifying crimes: a crime in which injury or death is intentionally inflicted through the use of a vehicle; and a crime involving a vehicle in which injury is caused by a person under the influence of alcohol or drugs, or caused by a driver of a vehicle fleeing a crime scene are also qualifying crimes. (*Ibid.*)

There is insufficient evidence of a violation of any of the identified Vehicle Code sections. There is also insufficient evidence that S.A. was under the influence of alcohol or drugs at the time of the collision. In order for this to be a qualifying vehicle crime, the injury must be “intentionally inflicted through the use of a vehicle.” (Gov. Code, § 13960(c)(1).)

Vehicle Code section 23103 defines reckless driving as driving a vehicle “in willful or wanton disregard for the safety of persons or property.” S.A. was convicted of a violation of Vehicle Code section 23104(a), which provides that a person engaging in reckless driving that proximately caused bodily injury to another person is guilty of a misdemeanor. It must be determined if the injury caused by S.A.’s reckless driving was intentionally inflicted through the use of a vehicle. If it was, then A.E.R. was the victim of a qualifying crime.

It must be determined what is required to show that an injury was “intentionally inflicted” by a vehicle. A general intent crime requires only an intent to do the act that causes the harm. A specific intent crime requires an intent to cause the resulting harm. (*People v. Atkins* (2001) 25 Cal.4th 76, 86; 104 Cal.Rptr.2d 738, 745.) The word ‘intentionally’ in a penal statute does not generally imply that the offense is a specific intent crime; ‘intentionally’ requires only that the person acted intentionally in engaging in the proscribed conduct. (*People v. Ramsey* (2000) 79 Cal.App.4th 621, 632; 94 Cal.Rptr.2d 201, 308.)

In order to prove the offense of reckless driving, it must be shown that the driver “. . . in the management of his automobile at the time and place in question intentionally did something with knowledge that injury to another was probable or acted with a wanton and reckless disregard for the safety of others and in reckless disregard of the consequences of his acts. [Citation omitted.]” (*People v. Schumacher* (1961) 194 Cal.App.2d 335, 338; 14 Cal.Rptr. 924, 926.) The elements of wantonness include: (1) consciousness of one’s conduct; (2) an intent to do the act in question; (3)

1 realization of probable injury to another; and (4) reckless disregard of the consequences. (*Id.*, 194
2 Cal.App.2d at p. 340; 14 Cal.Rptr. at p. 927.) For the purpose of reckless driving, willful means
3 intentional disregard of safety. (*Ibid.*)

4 It is determined that a violation of Vehicle Code section 23104[Reckless Driving] is not by itself
5 sufficient to prove that a qualifying vehicle crime occurred. The underlying facts constituting a
6 violation of Vehicle Code section 23104 [Reckless Driving] must be analyzed to determine whether
7 injury was intentionally inflicted through the use of a motor vehicle.

8 There is sufficient evidence that S.A. intentionally drove his car at excess speed into a sharp
9 curve knowing that harm was likely to result. He warned his passengers to make sure they had their
10 seat belts on, presumably to minimize any injury. He knew that entering the curves on this road at
11 excessive speed was likely to cause his car to cross over the double yellow lines into incoming traffic.
12 Considering the entire record, there is sufficient evidence that S.A. intentionally
13 inflicted injury through the use of his vehicle.

14 **Order**

15 The application shall be allowed and all verified, covered pecuniary losses should be reimbursed.

16 Date: July 13, 2001
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12 On July 13, 2001, the Victim Compensation and Government Claims Board modified its Decision in
13 the above-referenced matter and adopted the attached Decision as a Precedent Decision. The Decision
14 became effective on July 13, 2001.

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16 Date: July 23, 2001

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18 CATHERINE CLOSE
19 Chief Counsel
20 Victim Compensation
21 and Government Claims Board
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